

Order

Michigan Supreme Court
Lansing, Michigan

November 13, 2009

Marilyn Kelly,
Chief Justice

138974

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

ANN COBLENTZ, LEE COBLENTZ, JOHN
LEWANDOWSKI, and DEBORAH
LEWANDOWSKI,
Plaintiffs-Appellants,

v

SC: 138974
COA: 285431
Oakland CC: 03-046760-CZ

CITY OF NOVI,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the April 21, 2009 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals. The Court of Appeals erred in affirming the Oakland Circuit Court's application of a "due process" analysis in its April 24, 2008 order awarding the plaintiffs' attorney fees, costs and disbursements pursuant to the Freedom of Information Act, MCL 15.231, *et seq.* ("FOIA"). MCL 15.240(6) provides that courts shall award reasonable attorneys' fees, costs and disbursements to prevailing FOIA plaintiffs. In determining the reasonable attorney fees due to the plaintiffs, the circuit court considered whether the city's conduct was "corrupt enough" to justify a sanction that "amounts to a severe criminal penalty," and whether the requested attorney fees would bankrupt the city or whether a sanction would "burden . . . the public welfare." Nothing in MCL 15.240(6), or decisions of this Court, authorizes consideration of such factors in determining a reasonable attorney fee award. For the same reason, the Court of Appeals clearly erred in analyzing whether the documents were substantively useful to the plaintiffs' case. We REMAND this case to the Oakland Circuit Court for a re-determination of the plaintiffs' reasonable attorney fees pursuant to the factors set forth in *Smith v Khouri*, 481 Mich 519 (2008). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

KELLY, C.J. (*concurring*).

I concur with the order remanding to the circuit court for a redetermination of reasonable attorney fees pursuant to *Smith v Khouri*, 481 Mich 519 (2008). As this Court's most recent decision regarding attorney fee awards, *Smith* is controlling here. Were it not for *Smith*, I would remand for a redetermination of reasonable attorney fees under this Court's decision in *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573 (1982).

WEAVER, J. (*concurring*).

I concur in the result but write separately to say I continue to believe that *Smith v Khouri*, 481 Mich 519 (2008), a 4-to-3 opinion to which I signed a well-reasoned dissent, was wrongly reasoned and decided.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 13, 2009

Corbin R. Davis

Clerk